

Contains confidential information

Coal Mining and Safety Health Act 1999 (Qld)
QUEENSLAND MINING BOARD OF INQUIRY
STATEMENT OF BEN LEWIS

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I, Ben Hudson Lewis Regional Director of One Key Resources Pty Ltd 324 Queen Street, Brisbane in the State of Queensland, state as follows:

- 1 I am the Regional Director of One Key Resources Pty Ltd (**One Key**), and I make this statement to the extent possible, from my own knowledge. Some of the matters I refer to predate my role at One Key. The statement is based on my knowledge and experience gained from my role and the documents I have reviewed for the purpose of preparing this statement. Where I rely on information provided to me, I believe that information to be true and correct.
- 2 In a letter issued by the Queensland Mining Board of Inquiry to the Solicitors for One Key on 31 July 2020, it identified that one of the topics the Board will inquire into in the public sittings is “the nature of the employment relationship between workers at the mines, the operating entities and the labour hire agencies” and asking One Key to assist with that line of inquiry, and to provide a statement addressing the matters set out in Annexure One to the letter. I have prepared this statement to respond to the topic and the issues in annexure 1 to that letter to the extent that I am able to do so.
- 3 There are matters which are dealt with in this statement which are commercially sensitive and confidential to One Key.

EXPERIENCE

- 4 I am the Regional Director of One Key. I have worked at One Key for approximately five years. I started at One Key as General Manager for Operations and then moved to the Regional Director's position approximately 18 months ago.
- 5 I commenced my professional career in the armed services and obtained some tertiary qualifications at Duntroon in relation to personnel management, which was directed to personnel management in the armed services. I was the platoon commander of some 30 men in the infantry from approximately 1996 until early 2000. After I left the Army, I did further studies and then worked in recruitment for staff for the Queensland Government in a HR role for approximately 18 months from 2003.
- 6 From 2005 through until June 2015 I had a number of roles in recruitment of blue collar workers.
- 7 I started at One Key from about June 2015, and it was shortly after that later in 2015 that arrangements were first made for the supply of staff to Grosvenor Mine under particular arrangements that I will describe shortly, and which I understand to be a purpose built arrangement.

ONE KEY RESOURCES

- 8 One Key is a specialist provider of managed workforce services and labour hire to the mining, oil & gas and infrastructure industries.
- 9 One Key's business is based in Brisbane with regional offices in Perth, Singleton and Mudgee servicing the key resources areas of Australia and providing a base to service major regional civil infrastructure projects. In addition to this One Key has a mobile account management structure to support operations.
- 10 One Key generally is the supplier of general labour hire and outsourced workforce solutions across underground and open cut operations and maintenance in Australia. That covers a range of roles including development operators, supervisors and trades people. It covers shearer operators, long wall operators, out by operators and trades people, safety and compliance operators, deputies and statutory positions, and maintenance and workshop trades people.

ONE KEY EMPLOYEES

- 11 The Enterprise Agreement that the One Key group of companies presently operates under is a Greenfield agreement between FES Coal Pty Ltd and the CFMEU dated 13 August 2018 (AAMC.0001.011.0155). The entity within the One Key group of companies which is the party to the Enterprise Agreement is FES Coal Australia Pty Ltd and the Enterprise Agreement applies to all workers supplied by the One Key group of companies, including One Key Resources Pty Ltd for work for the black coal industry.
- 12 The Enterprise Agreement applies to all of our employees at Grosvenor, Grasstree and Moranbah North (**Anglo mines**) and any of the other sites to which we supply workers for underground coal and open cut or any other mining activity to do with coal. One Key pays its employees at Grosvenor, Grasstree and Moranbah North in accordance with the terms of the Enterprise Agreement and provides them with relevant leave and other entitlements which I will set out below in accordance with that Agreement. The labour hire agreements between Anglo and One Key are not determinative of the employment conditions between One Key and its employees.
- 13 The Enterprise Agreement sets out the employment conditions for the employees and the minimum base rates of pay. However, the payments made to One Key workers are significantly above, in most cases multiples of, the amount to be paid under the Enterprise Agreement. This is to ensure One Key can attract and retain the quality of employees that One Key needs.
- 14 The Enterprise Agreement provides for the categories of workers being:
 - 14.1 Permanent – indefinite employment;
 - 14.2 Part-time – the same as a permanent employee except their average ordinary hours are less than 35 per week;

- 14.3 Fixed term – for a fixed period ordinarily aligned with One Key’s contract to supply labour to that site; and
- 14.4 Casual – commonly for a period of 6 months to 12 months.
- 15 One Key also engages sub-contractors with specific skills who are on-hired to their clients in the same manner as the employed One Key workers. The contractual arrangements with these sub-contractors are commercially sensitive. The on-hired sub-contractors are engaged and integrated into the work site in the same manner as the other One Key workers.
- 16 I discuss below the basis upon how it is determined which category of employment is applied to each employee. Regardless of the category of employment, the employee must have the requisite skills and experience.
- 17 Under the Enterprise Agreement that we have, there is a casual conversion clause which the award itself does not have and is of particular value to casual workers. If someone is in regular casual employment and has been in the same role for 12 months, they can request to be taken on as a fixed term or permanent employee (the category determined by One Key), and One Key is obliged to meet this request. This clause has been referred to by the CFMEU as industry-leading.
- 18 For fixed term employees, ordinarily they are aligned to the contract period that One Key has with the mine operator. By way of example, in mid-2019 the latest contract variation took effect at the Grosvenor Mine and the effect of that was One Key had an extension to their agreement for two years plus an option for a further one year. At that time, One Key aligned its fixed term employees’ contract periods to the length of their contract with Anglo (Grosvenor Management) Pty Ltd, so in essence as long as One Key have tenure or security, the fixed term employees have the same security as One Key. So the fixed term employees at Grosvenor essentially have a tenured job as long as One Key has a contract.
- 19 There are other specific employee benefits, for example subsidised flights, which One Key provides to its workers from time to time.
- 20 A schedule to that agreement sets out the rate of charges applicable for each specific category of worker in each role covered by the Enterprise Agreement and their other benefits.
- 21 For leave entitlements, the Enterprise Agreement distinguishes between the casual category and the non-casual categories. Under the Enterprise Agreement, and in fact non casuals provided to Anglo receive paid annual leave (clause 16), paid personal/carer’s leave (clause 17), paid compassionate leave in the event of family illness or similar (clause 18), paid long service leave (clause 19), paid public holiday leave (clause 20), accident pay (clause 21) and superannuation (clause 22).
- 22 Under the Enterprise Agreement casual workers are entitled to unpaid personal/carer’s leave (clause 17), unpaid compassionate leave (clause 18), paid long service leave (clause 19), accident pay (clause 21) and superannuation (clause 22). Casuals are paid a loading of 25% (clause 8.9). The receipt of that payment does not affect the entitlement to the leave referenced above. Notwithstanding the Enterprise Agreement

does not provide for paid personal/carer's leave, any casual employee who is ill is permitted to take leave for that purpose albeit unpaid. One Key encourages its employees to take the unpaid leave so they do not attend the sites whilst they are unwell.

- 23 Significantly and despite the terms of the Enterprise Agreement the One Key workers at the Anglo mines in each of the particular positions in respect of which labour is supplied is the subject of a significantly higher rate of pay than as prescribed in the Enterprise Agreement, the precise details of which are commercially sensitive and would represent an advantage to our competitors were they known.
- 24 Suffice to say the range at which our workers are in fact paid is in an amount in excess of anything that would be recovered under the award and indeed the Enterprise Agreement, and ranges from an amount just in excess of \$50 per hour for certain categories of worker to an amount of approximately \$95 per hour, excluding leave and other entitlements.

SUPPLY OF LABOUR TO GROSVENOR, GRASSTREE AND MORANBAH NORTH

- 25 The Grosvenor, Grasstree and Moranbah North mines are operated respectively by Anglo Coal (Grosvenor Management) Pty Ltd, Anglo Coal (Capcoal Management) Pty Ltd) and Anglo Coal (Moranbah North Management) Pty Ltd which I will refer to collectively as 'Anglo'.
- 26 The contracts that One Key has with Anglo for supplying labour provide for payment to One Key based on a flat rate per hour. The relevant flat rate to apply will depend on the following factors:
- 26.1 the role;
 - 26.2 whether the worker was One Key sourced or Anglo referred; and
 - 26.3 whether the One Key worker is an on-hired subcontractor with an ABN.
- 27 The amount of the rate is set out in Schedule 2 of the variation to the labour hire agreement for Grosvenor dated 22 May 2019 (AGM.003.004.0095). There is a separate rate schedule for Grasstree and Moranbah North that also applies a flat rate as set out above. All of these rates are confidential and commercially sensitive.
- 28 The work model at the Grosvenor site is an integrated workforce management model which One Key calls a Managed Workforce Model and which I believe to be a unique model within the coal mining industry in Queensland. The business model at Grosvenor is such that management of the blue collar workforce is almost exclusively outsourced to One Key by Anglo. One Key is responsible for managing recruitment, terms of engagement, generic (not site specific) induction, rostering, performance management and reviews, disciplinary matters, payroll, hours of work and injury management.
- 29 Direct supervision with respect to the performance of the work is the responsibility of Anglo through its directly employed supervisors. The most senior level of employees engaged by One Key are Deputies, a Statutory Role, although most Deputies are

directly employed by Anglo . As at 6 May 2020, there was 6 Deputies at Grosvenor, 6 Deputies at Grasstree and 1 Deputy at Moranbah North that are One Key workers.

- 30 In the reference period for the Inquiry and indeed for a much longer period, the One Key workforce supplied to Grosvenor and Grasstree has remained reasonably stable. There have been no significant changes to One Key supplied workforce to those sites in the past two years. My experience is that once our workers go to those sites they generally stay there for a reasonable period of time. There is only a small number of One Key workers supplied to Moranbah North.
- 31 For Grosvenor, One Key also provides a float of surplus staff, that is marginally above manning requirements in its workforce group of some 8% to 10%. So for example, if there is required to be 400 workers in the manning schedule, One Key would not only supply those 400 workers but there would be available an additional 8% to 10% to fill any vacancies that might arise for any reason.
- 32 By comparison the labour supply model at the Grasstree and Moranbah North mines is a traditional labour hire model where we supply particular employees as required and who comprise a much smaller proportion of the overall workforce.
- 33 Under manning schedules as at 5 May 2020, the number of One Key workers supplied to Anglo were as follows:
- 33.1 Grosvenor – 402;
- 33.2 Grasstree - 98; and
- 33.3 Moranbah North – 3.
- 34 The manning schedule is a living document that is regularly updated.
- 35 As at 6 May 2020, the breakdown of workers across the various categories were as follows:

Mine	Casual	Fixed term	Subcontractors (on-hired as workers)	Total workers
Grosvenor	159	169	74	402
Grasstree	78	7	13	98
Moranbah North	3	0	0	3
Total	240	176	87	503

- 36 There are no permanent One Key workers on supplied to Anglo for Grosvenor, Grasstree and Moranbah North.

- 37 There are two One Key representatives embedded on site at Grosvenor and they are the Onsite Workforce Manager and the Onsite Workforce Coordinator.
- 38 Apart from those representatives, other One Key Staff, such as myself, regularly go to Grosvenor to oversee what is occurring. This includes our Safety Manager, other administrators, the Queensland Manager and occasionally the General Manager for Finance.
- 39 At Grasree and Moranbah North our representatives are not permanently onsite but visit when required, which is regularly.

PLACEMENT OF ONE KEY WORKERS

- 40 In the next part I will describe the process in place for putting One Key workers forward for placement at Grosvenor, Moranbah North or Grasree.
- 41 One Key adopts a multifaceted approach to sourcing labour. It has an extensive database and in terms of identifying potential candidates for a particular position, it would go to that database in the first instance. Concurrently, One Key advertises externally through Seek and Facebook and other online channels to make others aware of opportunities which are in the pipeline.
- 42 The process for supplying a worker or particular group of workers would typically arrive in the form of a written, or sometimes verbal request from Anglo. The written or verbal request would describe what was required in that group, and would specifically identify what work they would be performing and the classification of the role in accordance with the skills matrix.
- 43 We then identify a pool of prospective employees who have those qualifications, skills and experience. Then a process of candidate interviews, validating skills, experience and qualifications as well as reference checking is undertaken for the pool of candidates.
- 44 In order to identify appropriate candidates, One Key itself has experienced recruiters who understand the requirements of the role, and how to cross-reference skills and experience, and qualifications required for the task with those particular candidates. They are:
- 44.1 familiarity with mining terminology and the particular positions involved;
 - 44.2 specialist recruiters with particular knowledge in mining;
 - 44.3 trained to have an understanding of the language that is used in particular customers' operations; and
 - 44.4 trained in the recruitment and interviewing process, ensuring they have a full understanding of the requirements of the role and how to select or deselect individuals based on those requirements.
- 45 One Key then develops and presents a shortlist of preferred or recommended candidates and presents those candidates to Anglo who review the list for suitability.

Ordinarily, One Key's recommendation that we put forward is accepted, and it is rare for Anglo to reject a recommendation.

- 46 When a request is made by Grosvenor, Moranbah North or Grasstree, there is a clear system in place at One Key for assessing the experience of particular candidates before they are referred to the client for their review. A candidate's experience is carefully reviewed to ascertain whether the individual has sufficient experience in the particular task.
- 47 Once the candidate has been selected, One Key will then move forward and deal with a variety of pre-employment medical and health checks. Then One Key commences an onboarding process, and also mobilisation process.
- 48 As part of that process, One Key loads into the Anglo system the resume of the candidate, and other background information and their list of competencies, trainings and the skills profile from other sites.
- 49 Anglo will also undertake its own verification process in relation to skills and competencies of the workers and confirms that the worker's competencies are compliant with their own safety and health management system, and other training qualification requirements. The mine would usually then facilitate whatever updated training the worker requires for the role based on Anglo's requirements.
- 50 There are other things to be done, such as the One Key online induction, and safety questionnaires. As addressed below, the worker will also have to undertake the Anglo induction requirements prior to commencing work on the site.
- 51 One Key then organises the relevant mobilisation details, whether it be flights or accommodation arrangements, when and where they are to start, the drawing of contracts, issuing of personal protection equipment and those kinds of matters.
- 52 The workers supplied by One Key are typically highly experienced miners and well qualified. We do not generally have inexperienced underground mine workers unless they are part of a special program conducted by a mine for new coal mine workers.
- 53 In terms of One Key workers who are already placed at a mine, it is not uncommon for those workers to move from one position to a different position within the mine. If that occurred, that would be described as a remobilisation, and One Key would initiate a new contract or a contract variation associated with that new activity. That would then be managed by our onboarding team who would manage the contracts and where required, facilitate a reinduction process.
- 54 It is not uncommon for One Key workers on a site to seek a promotion or a change in role and if that occurred that in itself would go through the One Key recruitment team although it would be identified that they were an existing employee, and One Key would recheck their credentials, experience and skills with the onsite workforce manager (an employee of One Key). That review would also consider matters such as their attendance rates, attitude, behaviours and things of that kind.

- 55 Quite often One Key workers within a mine become aware of an available role and they register their interest with One Key. In almost every case that is the way the process of a change of position occurs, initiated by the worker themselves, but sometimes at the initiative of Anglo.
- 56 Unless a particular worker is put through the disciplinary process, which I will describe shortly, One Key does not participate in any practice of 'rotating' individuals who are placed on site. They may choose to leave of their own accord. There is an element of natural attrition, people wanting to get out of the industry, moving to a different State, personal or family circumstances. But Grosvenor and Grasstree are sites with high levels of retention.

TRAINING OF ONE KEY WORKERS

- 57 As I described above, following the recruitment process, the workers undertake inductions conducted by both One Key and Anglo.
- 58 As part of the onboarding process conducted by One Key, it provides to the worker a copy of the Anglo Corporate Policies (as supplied by Anglo) and there is a requirement for the worker to acknowledge receipt of these policies and that they have read and understood them and will comply with them.
- 59 Prior to commencement of any work on site, and in order to meet its statutory obligations, Anglo then undertakes the training of the workers in Anglo's:
- 59.1 SHE requirements including standard operating procedures;
 - 59.2 Anglo American's Corporate Policies; and
 - 59.3 Group Technical Standards.
- 60 There is a reporting process between One Key and Anglo which includes the exchange of information so that One Key can ensure the workers continue to comply with the requirements, policies and standards of the relevant site.
- 61 Specifically in relation to Grosvenor, the reporting process confirms to One Key that Anglo has done the necessary training and refresher training in those SHE, SHMS and policy materials. Anglo shares with One Key the training records of the One Key workers as part of this process.
- 62 In terms of reviewing that training and monitoring compliance with training requirements, the ongoing process is that One Key works with the particular mine's training department to make sure that each worker has the relevant competencies, experiences and it is current.
- 63 Where necessary, the training matrix is cross-referenced with the skills required for the role.
- 64 I have been asked whether Anglo has audited One Key to ensure that One Key has complied with Anglo's SHE requirements. Anglo has in fact conducted a full audit of

all our processes and our employee relationship management plan and that occurred most recently in December 2019. There were two senior representatives from Anglo who came from site to One Key's Brisbane office and went through everything in detail.

- 65 In terms of day to day compliance with Anglo's SHE, SHMS and policy materials by One Key workers, that is undertaken by Anglo for any workers on site regardless of whether they are One Key workers or Anglo employed.
- 66 A Site Safety Audit is also conducted annually. The most recent was in January 2020 (OKR.003.017.0001). It occurred between One Key's HSE manager (who has OHS and return to work qualifications), and Grosvenor's safety representative. In this process One Key audited the extent to which Anglo had an adequate safety management system to cover and control all risk in respect of all of the tasks that would be conducted by our workers.
- 67 Relevantly, the audit identified that there were no One Key workers performing work that they were not originally hired for and that there were no foreseeable operational changes that may affect the workforce in the next 12 months.

EMPLOYMENT CATEGORY

- 68 The categories of employment are set out in paragraph 14 above.
- 69 The usual process for determining the employment category for a worker is a combination of the mine's business needs together with a consideration of the individual worker's preference which is ordinarily expressed during the recruitment process.
- 70 The available categories of employment at Grosvenor, Moranbah North and Grasstree are either casual or fixed term dependent on the requirements for those sites at a particular point in time as well as taking into consideration the worker's preference and the demand in the market.
- 71 The offer of employment from One Key will identify the employment category.
- 72 One Key where possible seeks to accommodate the preference of the worker.
- 73 There are examples at Grosvenor where One Key workers have proactively made requests to change their employment category from casual to fixed and vice versa.
- 74 For the purposes of this statement I have given consideration to the issue of what might be described as the culture around the sorts of arrangements that One Key enters into to supply labour. In my experience One key employees at the 3 Anglo mines are not treated less favourably in the mine, or treated differently, or as some kind of second class citizen or inferior workers in the workplace. And the workers who are typically supplied under our labour supply arrangements are by no means inferior in terms of their experience and qualifications to those who are mine permanent employees.

- 75 My experience is that there is essentially no differentiation between the experience and qualifications, knowledge and attitude generally, and specifically attitude to conducting work safely and fully risk assessed than would be found for any permanent mine employee. Most if not all of One Key workers have worked previously on one or more mine sites of the kind to which they are being referred by One Key, either for an operator, or in some cases for contractors doing specific contract work.

BONUSES

- 76 There is no specific entitlement to bonuses under the terms of any agreement between One Key and Anglo, it is at the discretion of Anglo. The entitlement to any bonus for One Key workers differs between the sites.

Grosvenor

- 77 For the production bonus paid by Anglo at Grosvenor, each of the workers supplied by One Key are treated in the same way in that regard as every other similar category of worker on the site, including the permanent staff of Anglo. To my knowledge there is no differentiation whatsoever in the method by which, and the circumstances in which a bonus is paid to those workers. One Key has no direct influence or say in when or how a bonus has been paid.
- 78 There is no incentive on One Key to have bonuses paid when they might otherwise not be because for example key indicators have not been met. One Key takes no part in the calculation of the bonuses.
- 79 Each month the particular Anglo mine provides documentary information to One Key about what persons have qualified for what particular bonus payments. One Key administers the payment and processes and makes the payment and that is charged back to the client. One Key does not keep any part of the bonus apart from the requirement to keep statutory payments like long service leave and super which are treated as part of the remuneration for the position.
- 80 I am not aware of any situation where there has been a problem with the payment of a bonus for a One Key worker, or encountered a situation where a One Key worker was paid anything less, or in any different way to that which permanent Anglo staff in the same role have been paid.
- 81 I have also been asked to comment on the issue of whether the bonus arrangements involve some kind of penalisation of workers who raise safety concerns. I am not aware of this occurring. Also, there has been no experience that I have encountered of One Key workers not raising safety concerns because of any perceived risk of the payment of bonuses.
- 82 I am aware that one of the considerations for the calculation of bonuses is whether there have been safety non-compliances. The monthly client reviews which occur between One Key representatives and the mine identify amongst other things whether there have been any safety non-compliances and the circumstances of any such non-

compliance. My review of those monthly records suggests that there is no evidence of a failure by One Key or its workers to report safety concerns.

- 83 Because of the seamless integration of One Key workers with the rest of the mining workforce, I do not believe there is any reason to think that there would be any reluctance of One Key workers to report safety concerns.

Grasstree and Moranbah North

- 84 For Grasstree, I understand there is a retention bonus that may be paid to workers. As set out in paragraph 79 above, if a bonus is payable to a One Key worker, One Key does not apply any profit margin to the bonus.
- 85 I am not aware of any bonuses being paid to One Key workers at Moranbah North.

MEMBERSHIP OF EMPLOYEES IN THE CFMEU

- 86 There are no limitations, rules or guidelines on any One Key employee being a member of the union or otherwise. The CFMEU would be in a position I would imagine to provide those numbers, however they are not kept by One Key. Hence I am unable to say what proportion of the One Key workforce has union membership.
- 87 I am unable to say and no other person at One Key would be able to say what percentage of those workers are members of the CFMEU because no part of our processes to find and place employees calls for an inquiry into whether an employee is a member of the union. It is in no way a factor in determining whether to or where to place employees who have memberships in the union.
- 88 I am not aware of any approach by the CFMEU to One Key to discuss any concerns they have about the way that safety is managed, or any suggestion that any of our employees have not acted in a way which the mine required, or which was regarded as inappropriate in terms of dealing with safety.

RAISING SAFETY CONCERNS AT THE ANGLO MINES

- 89 I have been asked to consider whether there is a system in place by which One Key workers can raise and have addressed safety concerns at Grosvenor, Grasstree and Moranbah North, and how often it is utilised.
- 90 As part of the One Key induction process, workers are made aware of various reporting channels for safety concerns including but not limited to direct contact with their One Key account managers and/or contacting head office with a concern.
- 91 One Key also has an anonymous whistle-blower hotline for reporting any concerns including safety concerns.
- 92 We encourage during the induction process the workers to utilise both the One Key process and the Anglo process for raising any safety concerns on site.

- 93 In my experience, One Key Workers are proactive in raising safety concerns. Ordinarily these are primarily raised on site with Anglo but any incident or injury is required to be reported to us in addition to Anglo.
- 94 If One Key receives a safety concern it is recorded in our database system and the concern is escalated to Anglo for a response. Any safety matters are cross-referenced at the monthly review with Anglo.
- 95 On the occasions that One Key has raised a safety issue with Anglo, it has been well received and promptly addressed.

INABILITY TO SUPPLY WORKERS

- 96 I have not encountered a situation where One Key has been unable to supply the number of workers required pursuant to any request for employees to be provided. However, on some occasions the time period to meet the request may be longer than originally anticipated.
- 97 There have been no circumstances in which One Key has suffered any consequences for not supplying workers within a specific time.

REMOVAL OF ONE KEY WORKERS FROM ANGLO SITES

- 98 I have been asked to consider whether Anglo has ever required One Key to remove a worker from site and if so what reasons were given.
- 99 Anglo has on rare occasions required One Key to remove a worker from their sites. In my experience, this is primarily due to a safety concern including a SSE exercising their statutory obligations.
- 100 On other occasions, Anglo has raised with One Key performance issues with its workers, and when such issues are raised, One Key undertakes an investigation of the issue as per its employment relationship management plan.
- 101 This investigation process will involve gathering the necessary evidence and will include engaging with the worker.
- 102 The outcome of the investigation could be that no further action needs to be taken, or a disciplinary process will need to be commenced by One Key. The disciplinary process is conducted by One Key and Anglo does not participate in the decision making aspects of that process.
- 103 For the review period of 1 July 2019 to 5 May 2020, the following number of workers have involuntarily ceased being deployed to the sites (excluding those whose contracts were at an end):

Mine	No of workers
Grosvenor	9

Grasstree	6
Moranbah North	0
Total	15

- 104 A Record is kept in every case of the relevant circumstances relating to the particular employee who is being disciplined. Within that group of 15 in the review period, the two most common assigned reason for this action were described as “policy breaches” and “safety breaches”. Those in some cases involved failure to comply with safety requirements.
- 105 Examples of the breaches included such things as , in breach of the SMSH, attending work when ill during the COVID-19 period when instructed not to, and dishonestly completing timesheets.
- 106 There was no example of anyone being asked to be removed because a worker had expressed concerns about working conditions or safety concerns or because a worker was seen in some way to be consistently over reporting such matters. Nor have I ever heard of such an issue being raised in relation to any One Key workers supplied.
- 107 Another category for in which One Key workers were disciplined included failure to fit within the structural cultural requirements of the site, for example insubordination, refusal to act under directions or refusing to comply with them.
- 108 Another category for in which workers were removed was allocated to “misconduct”. That included using an illicit substance detected on a drug test, and sleeping on shift. The final category was attributed to inadequate attendance, where there were too many unexplained absences from work when rostered.
- 109 In relation to whether One Key attempted to resolve Anglo’s concerns about the worker in all cases of termination, One Key was made aware of the issues via a number of different channels, most commonly from Anglo supervisors or superintendents speaking with our Workforce Manager onsite about a particular individual or a set of circumstances. Then our Workforce Manager, with support of other staff in One Key conducts an investigation, in line with our employee relationship management plan, and sometimes that will result in them going into the disciplinary and performance management process. One Key advises the client if we were looking to terminate a person or remove him from site or give a warning or whatever the outcome might be.
- 110 As described above, Anglo is not involved in that review process, Anglo makes us aware of an issue, we go through due process to arrive at what the outcome should be, and then, in the vast majority of cases we take that action that we've recommended and manage our employee appropriately which, sometimes arrives in cessation of their assignment on site.

OBLIGATIONS UNDER S 43 OR OTHERWISE OF THE COAL MINING SAFETY AND HEALTH ACT 1999

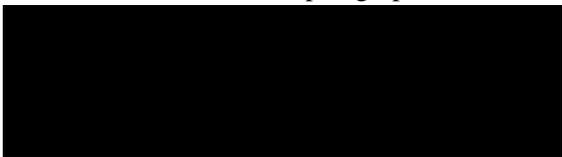
- 111 It is my understanding and it has always been my understanding that One Key does not have any specific statutory obligations under s 43 of the Coal Mining Safety and Health Act or any other statutory obligations in relation to an equivalent provision. That is because of the requirements in the Act that there be a single Safety and Health Management System, being the existence of the mine's system and that the definition of a contractor does not apply to One Key.
- 112 I refer to the document "Contractor Obligations under s43" (OKR.003.003.001). I was not directly involved in the preparation of that document. I understand that it came about when One Key was asked by clients in 2019 to articulate to them that we understood were One Key requirements as a contractor were under the Act and acknowledge that they were fully aware that we needed to fall in line with the client Safety management plan. And that is what was produced. It was not based on any legal advice to One key as to its obligations, if any under s43.
- 113 That is not to say that One Key could not discharge obligations of its own in relation to ensuring the health and safety of its workers at these mine sites, were it permitted to do so to the extent that it were able to do so.
- 114 Because One Key has employees in other states where there is an obligation in that regard, One Key has developed its own HSE Management Plan, which was developed for the purposes of meeting One Key's obligations under the National harmonisation laws. It refers specifically to the Work Health and Safety Act 2011 which is the National Scheme.
- 115 The One Key HSE management plan identifies the way in which One Key discharges its responsibilities in other States, particularly New South Wales, where there is a direct obligation on it under the Work Health and Safety Act. That reflects the notion that One Key has a duty to the extent that it has the capacity to influence and control a particular matter and there is a consultative process between the labour hire arranger and the other players to allow that to occur.
- 116 The One Key HSE management plan outlines what it does to manage risk which is within its control and influence and given the nature of labour hire that is primarily the things at the front end of the process leading to the placement onsite. Thereafter, it is the coal mine operator's systems of work and safety policies and procedures for the conduct of specific tasks that take over and apply to the labour hire workers.
- 117 There are components in that HSE management plan that outline how One Key is to maintain the currency of the skills of individual employees, their experience, medicals and matters of that kind in order to meet our obligations under the National harmonisation laws.
- 118 In practice the coal mine operator or any mine operator is going to have a far more extensive and concise specific health and safety management plan which needs to cover off on every mining task, and they have a direct statutory responsibility for that.

- 119 Part of the HSE management plan is a specific component which permits for auditing. One Key conducts a three stage auditing process in that context where for instance a new client will be first contacted and a client evaluation conducted. That involves a broad level assessment around what their own safety and health management plan was. Other relevant considerations would be whether the mine site was not actually within a lease, or if it was a mine that was no longer operational, was in revegetation or matters of that kind. All of those matters would be essential to permit One Key to meet its obligations under the National Act, or individual State Work Health and Safety Acts.

RESPONSE TO SPECIFIC QUESTIONS

- 120 A description of the process in place for putting a One Key Resources Pty Ltd (One Key) worker forward for employment at Grosvenor, Moranbah North or Grasree Mines has been set out at paragraphs 40 to 56;
- 121 A description of the process for determining which employment category a worker is engaged at Grosvenor, Moranbah North or Grasree Mines - whether on a maximum term or casual contract or other category has been set out at paragraphs 68 to 75;
- 122 A description of the financial incentives or remuneration offered by Anglo Coal to One Key for the provision of workers to Grosvenor, Moranbah North or Grasree Mines has been set out at paragraphs 26 and 27;
- 123 A description of the system in place for the assessment of a worker's training, skills and experience to determine their suitability for placement at Grosvenor, Moranbah North or Grasree Mines has been set out at paragraphs 57 to 63;
- 124 A description of the system in place to train the workers, prior to commencing their placement at Grosvenor, Moranbah North or Grasree Mines, in Anglo Coal's: a. SHE requirements, including standard operating procedures; b. Anglo American's Corporate Policies; and c. Group Technical Standards has been set out at paragraph 59.
- 125 A description of the system in place to ensure the workers' on-going comply with the requirements, policies and standards referred to above in paragraphs 62 and 63.
- 126 The issue of what records does One Key keep of the training referred to above and the monitoring for compliance referred to above has been set out at paragraphs 62 and 63.
- 127 The issue of whether Anglo Coal undertaken an audit or audits of One Key to ensure One Key's compliance (and its workers' compliance) with Anglo Coal's SHE requirements? If so, how often has been set out at paragraphs 64 to 67.
- 128 The issue of whether One Key has in place a system by which its workers can raise, and have addressed, with or through One Key, any safety concerns at Grosvenor, Moranbah North or Grasree Mines and if so, what is that system and how often is it utilised by workers has been set out paragraphs 89 to 95.
- 129 The issue of how frequently is a Manning Schedule issued to One Key has been set out at paragraph 34.

- 130 The issue of how many workers does One Key presently provide to Anglo Coal has been set out at paragraph 33.
- 131 The issue of what percentage of those workers are members of the CFMEU has been set out at paragraphs 85 to 87.
- 132 The issue of what percentage of those workers are employed pursuant to: a. a maximum term contract; b. a casual contract; or c. another category of contract has been set out at paragraph 35.
- 133 The issue of whether One Key has ever been unable to supply the number of workers required pursuant to a Manning Schedule and if so, what was the consequence for One Key has been set out at paragraphs 96 and 97.
- 134 The issue of whether Anglo Coal has ever required One Key to remove a worker from site and if so, what reason, if any, was given; And did One Key attempt to resolve Anglo Coal's concerns about the worker with a view to having the worker retain their placement at Grosvenor, Moranbah North or Grasstree has been set out at paragraphs 98 to 110.
- 135 The issue of whether One Key considers it has any statutory obligations at Grosvenor pursuant to section 43, or any other provision, of the Coal Mining Safety and Health Act 1999 and if so, what does One Key do to discharge those obligations has been set out at paragraphs 111 to 119.



Signed by Ben Lewis
20 August 2020

**DOCUMENTS REFERRED TO IN BEN LEWIS'S WITNESS STATEMENT – 20 AUGUST
2020**

Tab	Board reference	Description	Date	WS Reference
1.	AAMC.0001.011.0155	Greenfield Enterprise Agreement between FES Coal Pty Ltd and the CFMEU	13 August 2017	[11]
2.	AGM.003.004.0095	Amendment to Labour Hire Agreement numbered 45603 (Extension until 31 May 2021)	22 May 2019	[27]
3.	OKR.003.017.0001	Site safety audit	20 January 2020	[66]
4.	OKR.003.003.001	Contractor Obligations under s43	-	[112]